

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARLA MILLER and U.S. POSTAL SERVICE,
POST OFFICE, Rochester, MI

*Docket No. 99-939; Submitted on the Record;
Issued June 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant established that her disability from work was causally related to her accepted left elbow condition.

On November 12, 1997 appellant, then a 48-year-old letter carrier, filed a notice of occupational disease and claim for compensation alleging that she developed tendinitis in both elbows in the performance of duty. The record indicates that she has suffered from this condition since 1990. The employing establishment noted on the CA-2 form, that appellant first reported her condition to her supervisor on August 5, 1997 when she requested light duty.¹ Her supervisor noted that appellant was excused from casing mail effective August 17, 1997 and that her job duties since that date consisted mainly of delivering express letters and minor clerk functions.

On February 18, 1998 the Office of Workers' Compensation Programs accepted the claim for left medial epicondylitis and paid medical benefits. The Office specifically noted, however, that a bone spur had not been established as work related. Appellant received compensation for intermittent periods of wage loss from September 23 to November 17, 1997, during which time she was seeking medical treatment for her elbow condition. Although, the employing establishment had placed appellant in a light-duty position, she stopped work completely from December 2, 1997 to April 23, 1998. She filed a series of CA-7 claim forms seeking compensation for wage loss from July 28 to 31, 1997 and December 2, 1997 to April 23, 1998.

¹ There is a return to work/school certificate from Select Health Centers noting that appellant was evaluated on July 28, 1997 and was disabled from work from July 28 to August 3, 1997. It was further noted that she could return to work on August 4, 1997 with the following restrictions: "limit sorting mail to 2 hours per day, no mail delivery" and no lifting more than 15 pounds.

Appellant submitted a report dated December 20, 1994 from Dr. Phyllis P. Birkel, a rheumatologist. She indicated that she had been treating appellant for bilateral elbow pain and soreness and stiffness in both hands since March 19, 1991. Dr. Birkel noted that appellant attributed her symptoms to grasping letters at work.

In a January 7, 1997 report, Dr. Edward F. Burke, a Board-certified family practitioner, noted that appellant was under his care for complaints of pain in the medial side of both elbows. He stated: “[Appellant] is employed as a carrier of the [employing establishment] and believes her problem is caused by repetitive motion of her elbows during the course of her job. On the basis of her examination today, we are in agreement that this is indeed a work-related problem and should be addressed as such.” Dr. Burke recommended that appellant curtail her work activities and opined that she may need to be off work altogether because of her symptoms.

Appellant had x-rays of the left elbow taken on January 13 and August 8, 1997, which showed a small spur off the medial epicondyle.

An electromyogram (EMG) dated November 17, 1997 revealed minimal bilateral carpal tunnel syndrome. The EMG report prepared by Dr. Kenneth J. Botessi, a Board-certified neurologist, noted that appellant’s symptoms were more suggestive of tendinitis with no evidence of ulnar nerve involvement or upper extremity radiculopathy.

In a report dated January 7, 1998, Dr. Burke noted that appellant had been suffering from pain in the medial sides of both elbows for six years and was under the care of several physicians. He identified appellant’s condition as medial epicondylitis bilaterally and stated that “this may very well be a work-related problem and may have to be addressed as such.” Dr. Burke reported negative physical findings but recommended that appellant start off with a rigid brace and a series of injections to alleviate her pain. He further stated: “[Appellant’s] habitus will have to be changed in the sense that the work will have to be altered to either no work at all or to a very light-duty capacity, without flexion or extension of the elbows or any appreciable lifting with her arms. This would preclude her from work as a postal carrier at the present time.”

In a report dated April 22, 1998, Dr. Burke approved appellant for a return to restricted duty, indicating that appellant could not use her left hand and could not lift more than two pounds.

On May 4, 1998 appellant accepted a limited-duty assignment offer from the employing establishment.

By letter dated April 28, 1998, the Office advised appellant that she needed to submit detailed medical evidence addressing her disability from work for the periods claimed on her CA-7 forms.

In a May 27, 1998 report, Dr. Burke noted that appellant complained of soreness in the elbows but had negative physical findings. He approved appellant for regular duty on an eight-hour per day basis with no overtime.

In a decision dated May 28, 1998, the Office denied appellant's claim for compensation on the grounds that the evidence was insufficient to establish that appellant's alleged disability for the periods July 28 to July 31, 1997 and December 2, 1997 to May 3, 1998 was due to her work-related condition.

On August 19, 1998 appellant requested reconsideration.

In support of a reconsideration request, appellant submitted a report dated July 8, 1998 from Dr. Burke. He noted that appellant was seen for follow-up in regard to medial epicondylitis bilaterally and ulnar root irritation. Dr. Burke related that appellant complained of aches and pains but stated that there was no evidence of effusion, that appellant demonstrated negative resistive extension and flexion tests and that there was negative Tinel's sign. He advised that he had not treated appellant during July 1997. Although Dr. Burke indicated that he had taken appellant off work between December 1997 and May 1998, he did not explain the nature of appellant's disability from her light-duty job.²

Appellant also submitted a December 2, 1997 report by Dr. Guy Pierret, a Board-certified orthopedic surgeon. He advised that appellant was seen on referral from her treating physician. Dr. Pierret related that since 1995 appellant received all modalities of treatment including elbow braces, medications, occupational therapy and injections without relief of her pain. He reported that on physical evaluation appellant was mainly tender in the flexor muscle mass on the medial aspect of her forearm and that she was not tender over the lateral or medial epicondyle. Dr. Pierret recommended that appellant receive an injection followed by a course of physical therapy. He stated that it was doubtful whether appellant's condition was work related.

In a decision dated October 5, 1998, the Office denied modification following a merit review.

The Board finds that appellant failed to establish that she was disabled from work from July 28 to 31, 1997 and December 2, 1997 to April 23, 1998 due to her accepted work-related elbow condition.

A person who claims benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim, including the fact that an injury occurred in the performance of duty as alleged and that disability for employment was sustained as a result thereof.⁴ To establish entitlement to continuation of pay or monetary compensation

² Appellant also submitted a nerve conduction test dated March 31, 1998 that was interpreted as normal.

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Charlene R. Herrera*, 44 ECAB 361 (1993); *Dean E. Pierce*, 40 ECAB 1249 (1989).

benefits, an employee must establish through competent medical evidence that the disability from work resulted from the employment injury.⁵

The Board has also held that when an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty.⁶

In the instant case, the Office accepted that appellant sustained a left elbow condition in the performance of duty and paid medical benefits and intermittent wage-loss compensation from September 23 to November 17, 1997. At the time appellant filed her occupational disease claim, she was working in a light-duty position due to medical restrictions associated with her left arm condition. The employing establishment indicated on appellant's CA-2 claim form that appellant was working light duty performing minor clerical duties and delivering only express mail. She was completely excused from her regular mail delivery duties.

After filing her claim, appellant stopped working her light-duty position from December 2, 1997 to April 23, 1998. She alleges that she was disabled from work due to her accepted elbow condition and submitted various reports from Dr. Burke indicating that appellant's left arm was in a cast and that she was undergoing physical therapy. In none of those reports, however, did he opine that appellant was disabled from her light-duty job. In his January 7, 1998 report, Dr. Burke indicated that appellant's job duties as a letter carrier would have to be curtailed, but he did not address whether or not appellant could perform the sedentary clerical duties of her light-duty position. Although he stated that appellant's work would have to be altered to a very light-duty capacity, it appears he was under the impression that appellant was still working in her regular position as a letter carrier. Because Dr. Burke did not provide a reasoned medical opinion, addressing the nature and extent of appellant's disability related to her accepted condition from December 2, 1997 to April 23, 1998, appellant failed to carry her burden of proof in establishing her disability from work for that period.⁷ Furthermore, since he specifically stated that he did not treat appellant during July 1997, the Board finds no evidence of record to support appellant's claimed disability from work from July 28 to 31 1997. Consequently, the Board finds that the Office properly denied appellant's claim for continuing compensation for wage loss for the periods in question.

⁵ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Daniel R. Hickman*, 34 ECAB 1220 (1983). As used in the Act, the term "disability" means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. The general test in determining loss of wage-earning capacity is whether the employment-related impairment prevents the employee from engaging in the kind of work he was doing when he was injured; *see Frazier V. Nichol*, 37 ECAB 528, 540 (1986).

⁶ *See Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁷ The Board notes that, in an April 22, 1998 report, Dr. Burke released appellant to work with the restriction that she not use her left arm. There is no explanation from the doctor as to why appellant could not work from December 2, 1997 to April 23, 1998 under the same medical restriction.

The decisions of the Office of Workers' Compensation Programs dated October 5 and May 28, 1998 are hereby affirmed.

Dated, Washington, D.C.
June 22, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member